IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1997 OF 2005

IN

SUIT NO.1871 OF 2005

R.W.Sawant ...Plaintiff.

vs.

1. Bombay Wire Ropes Ltd. & another. ...Defendants.

Mr.B.B.saraf with Mr.Rajiv Jadhav i/b. Y.R.Shah, for Plaintiff.

Mr.D.D.Madan, Sr.Counsel with Mr.S.C.Naidu i/b. C.R.Naidu & Co, for Defendant no.1.

Ms.M.Singh i/b. Federal & Rashmikant, for Defendant no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 28th MARCH,2007..

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed this suit seeking decree of specific performance of the agreement entered into for sale of the land owned by the defendant

no.1 to the plaintiff dated 9.4.2005. The total agreed consideration was Rs.30 crores. Out of that amount Rs.50 lakhs was paid on the date of the agreement itself. Even before the agreement was entered into between the plaintiff and defendant no.1, the defendant no.1 had entered into a development agreement with M/s.Warden Synplast Pvt.Ltd. Further amounts, as per the agreement, were to be paid by the plaintiff to the defendant no.1. The defendant no.1 was also to get the agreement with that developer cancelled. The agreement also provides that if the plaintiff fails to complete the transaction he will be entitled to refund of the amount of Rs.50 lakhs without any interest against which the defendant no.2 will be entitled to return the title documents to the defendant no.1 which were deposited by defendant no.1 with defendant no.2. It appears that no payment has been made by the plaintiff to the defendant no.1. It appears that the plaintiff came to know that a part of the land which was agreed to be sold has been declared surplus under the Urban Land Ceiling Act. The plaintiff sought an explanation about that from defendant no.1. The defendant no.1 however, by letter dated 10.6.2005 terminated the agreement and offered the amount of Rs.50 lakhs back. The plaintiff, therefore, came to the Court filing the suit seeking decree of specific performance.

2. This notice of motion has been taken out for seeking order of appointment of Receiver on the property and seeking order of

temporary injunction restraining the defendant no.1 from further transferring the property. At the ad-interim stage by order dated 1.7.2005, the defendant no.1 was directed to deposit an amount of Rs.50 lakhs in this Court and the title deeds which were in possession of the defendant no.2 were also directed to be deposited in the Court. Those title deeds, the defendant no.1 has taken back after depositing the amount of Rs.50 lakhs. Perusal of the record shows that the agreement for sale between the plaintiff and defendant no.1 was subject to the development agreement that defendant no.1 had entered into with M/s.Warden Synplast Pvt.Ltd. That agreement admittedly has not been cancelled. On the contrary with the consent of that party, the defendant no.1 has entered into a development agreement with a third party on 29.12.2005. That third party, despite information being supplied to the plaintiff, has not been joined as defendant in the suit. A substantial portion of the land is also declared as surplus under the Urban Land Ceiling Act. In my view, considering the nature of the agreement and the fact that there are already third party rights created by the defendant no.1, the plaintiff does not have prima facie case for getting decree of specific performance of the agreement, grant of which is in the discretion of the Court and therefore, the plaintiff is not entitled to any interim relief.

3. The amount of Rs.50 lakhs which has been deposited by

the defendant no.1 is lying with this Court duly invested. I put it to the learned Counsel appearing for plaintiff, whether the plaintiff wants the amount back, he stated that his instructions are not to claim the amount. In this view of the matter therefore, the Prothonotary and Senior Master of this Court is directed to keep the amount invested to the credit of this suit during the pendency of the suit.

The notice of motion is disposed of.